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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,632	08/19/2003	Akira Tanaka	500.43031X00	3748

20457 7590 09/14/2006

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EXAMINER

KALAFUT, STEPHEN J

ART UNIT PAPER NUMBER

1745

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/642,632

Applicant(s)

TANAKA, AKIRA

Examiner

Stephen J. Kalafut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,4-13,15 and 16 is/are allowed.
- 6) ☒ Claim(s) 14,17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 14, 17 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Dristy *et al.* (US 6,926,988), for reasons of record.

Claims 1, 2, 4-13, 15 and 16 are allowed. The allowable subject matter of original claim 3 and now recited by claim 1, and thus also of the claims depending thereon.

Applicant's arguments filed 07 July 2006 have been fully considered but they are not persuasive.

Applicant argues that Dristy *et al.* do not disclose “the first and second contact members being prevented from contacting each other within the head surface area when viewed in the pressing direction”, the pressing member having a “head surface area” extending in a transverse direction. This is not persuasive because the pressing member (64) of Dristy *et al.* includes a top surface that directly contacts a contact member (60). This top surface is the upper surface of the pressing member (60), as seen in figure 3, and extends in a transverse direction, which is left to right, thus corresponding to the present “head surface”. It should be noted that figure 3 is an exploded view, where the members are shown spaced from each other, whereas in reality, the various components would be in physical contact. The two contact members (56, 60) are on opposite sides of the membrane electrode assembly (51, 52, 53), and are thus “prevented from contacting each other”, not just within the head surface area as seen from the pressing direction

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(up and down), but over their entire bodies. Even if one were to take the outer frames (57, 67) to be part of a respective contact member, these frames contact each other outside of the periphery of the pressing member, and thus outside of the “head surface area”. Regarding the allegation that Dristy *et al.* is “silent” about these features, characteristics reasonably inferred from the drawings are part of the legitimate disclosure of that patent.

Applicant argues that Dristy *et al.* do not disclose the anode and cathode side members being connected to each other through “supporting portions on the outer periphery of the membrane electrode assembly and urged toward each other between the membrane electrode assembly and each of the supporting portions”, as required by claim 17. The frames (57, 67) of Dristy *et al.* would correspond to the present “supporting portions”, while the flow field support members (56, 60) would correspond to the present “anode side member” and “cathode side member”. The frames hold the flow field support members in place (column 4, line 66 through column 5, line 2), and thus form support portions for these members. It should be noted that the present specification and drawings, used to define the present claims, allow for the support portions to be distinct members, and not integral with the rest of the “side members”, as seen in the embodiment in present figure 6, where the support portion (11) is a component separate and distinct from the side members (5, 6). The frames of Dristy *et al.* are in contact with the outer periphery of the membrane (51) and thus are connected to each other “on the outer periphery of the membrane electrode assembly”, the term “connected” not seen requiring direct contact. Because the pressure pad (64) is held in position by a frame (67), it would extend across the adjacent electrode, and thus apply pressure between the membrane electrode assembly and the frame, as well as within the area of the electrode.

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Applicant argues that Dristy *et al.* do not disclose clamping members as recited in claim 18, and that the frames thereof merely retain flow field support members within the flow fields. This is not persuasive because if there were no clamping members, the components of the fuel cell of Dristy *et al.* would not be held together. Nothing would balance against the force exerted by the pressing member (64).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

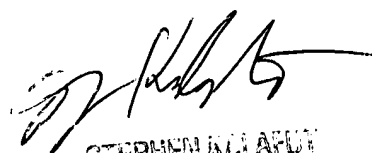
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk


STEPHEN W. LAFONT
PRIMARY EXAMINER
GROUP 1700